

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HAPPY HOUR DRINKS COMPANY, INC.,

Plaintiff,

-against-

3:24-cv-00047
(TJM/ML)

ANSWER

CAN MAN, LLC d/b/a Best Bev Co.,
BEST BEV, LLC and
JOHN DOES 1 through 100

Defendants.

The defendants, CAN MAN, LLC d/b/a Best Bev Co. and BEST BEV, LLC, for their answer to the complaint herein, by their attorneys, Cook, Kurtz & Murphy, P.C., respectfully show to the Court and allege:

I.

That they deny having knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered “2”, “3”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “12”, “13”, “14”, “15”, “16”, “17”, “18”, “19”, “24”, “27”, “32”, “33”, “34”, “39”, “43”, “44”, “45”, “49”, “50” and “51” of the complaint herein.

II.

That they deny the allegations contained in the paragraphs numbered “1”, “11”, “20”, “21”, “22”, “23”, “25”, “28”, “29”, “30”, “35”, “36”, “37”, “40”, “41”, “42”, “46”, “47”, “52”, “53”, “54”, “55”, “56”, “57” and “58” of the complaint herein.

III.

That they deny each and every allegation of the complaint not hereinbefore expressly and specifically admitted, controverted or denied.

**AS AND FOR A FIRST, SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN, LLC
d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:**

IV.

That the claims herein fail to state facts sufficient to constitute a valid cause of action.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN, LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

V.

Plaintiff has failed to mitigate any damages claimed in this action.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN, LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

VI.

Plaintiff's claims are barred by the doctrines of promissory and equitable estoppel.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN, LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

VII.

Plaintiff's claims are barred by the doctrine of ratification.

AS AND FOR A FIFTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN, LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

VIII.

Plaintiff's claims are barred by the doctrine of waiver.

AS AND FOR A SIXTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN, LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

IX.

Plaintiff's claims are barred by the doctrine of laches.

AS AND FOR A SEVENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN,LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

X.

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

AS AND FOR AN EIGHTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN,LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

XI.

Plaintiff's claims are barred by lack of causation.

AS AND FOR A NINTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN,LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

XII.

To the extent plaintiff incurred any damages as alleged in the complaint, those damages were caused by the actions or inactions of plaintiff and/or third-parties, and/or by matters or circumstances for which plaintiff or third-parties have sole and exclusive responsibility and liability.

AS AND FOR A TENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN,LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

XIII.

That upon information and belief, the defendants' liability is limited pursuant to New York Civil Practice Laws and Rules Section 1601.

AS AND FOR AN ELEVENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN,LLC d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:

XIV.

That plaintiff's claims are barred by applicable statute of limitations.

**AS AND FOR A TWELFTH, SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, THE DEFENDANTS CAN MAN,LLC
d/b/a Best Bev Co. and BEST BEV, LLC ALLEGE:**

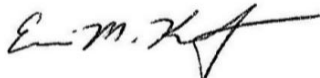
XV.

That plaintiff has failed to obtain personal jurisdiction over the defendants CAN
MAN,LLC d/b/a Best Bev Co. and BEST BEV, LLC.

DEFENDANTS HEREBY DEMAND A TRIAL BY JURY

WHEREFORE, the defendants, CAN MAN, LLC d/b/a Best Bev Co. and BEST BEV, LLC, demand judgment dismissing the complaint of the plaintiff, as against them, or in the alternative, diminution of damages based on the culpable conduct of the plaintiff and judgment over against the plaintiff in an amount to be apportioned and determined at the trial of this action, together with the costs and disbursements of this action, and reasonable attorney's fees.

Dated: February 13, 2024



ERIC M. KURTZ, ESQ. #103869
COOK, KURTZ & MURPHY, P.C.
ATTORNEYS FOR DEFENDANTS/
CAN MAN, LLC d/b/a Best Bev Co. and BEST BEV, LLC.
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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2024, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

1. JOSEPH A. CHURGIN (6854)
SAVAD CHURGIN



ERIC M. KURTZ, ESQ. #103869
COOK, KURTZ & MURPHY, P.C.
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